

**In the United States District Court
For the Southern District of Georgia
Waycross Division**

DERRICK D. BARRON,

Petitioner,

v.

WARDEN TOM GRAMIAK,

Respondent.

*
*
*
*
*
*
*
*

CIVIL ACTION NO.: 5:16-cv-7

ORDER

Petitioner Derrick Barron ("Barron"), who is currently housed at Ware State Prison in Waycross, Georgia, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 attacking his conviction and sentence obtained in the Superior Court of Tift County, Georgia.¹ Dkt. No. 1. This Court ordered service of Barron's Petition on Respondent and directed Respondent to respond to Barron's Petition. Dkt. No. 8. Respondent filed an Answer-Response indicating that Barron failed to exhaust his claims in the State court system. Dkt. No. 13. On June 13, 2016, Barron filed a Motion to Dismiss his Section 2254 Petition, without prejudice, and agrees that he

¹ The Court notes that Tift County, Georgia, lies within the Valdosta Division of the Middle District of Georgia. 28 U.S.C. § 90(b)(6). While the Court ordinarily would transfer Barron's Petition to that Court, it will not do so here, given Barron's desire to dismiss his Petition.

failed to exhaust his available State court remedies. Dkt. No. 15. Respondent has not filed a response to Petitioner's Motion to Dismiss.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), "an action may be dismissed at the [petitioner's] request only by court order, on terms that the court considers proper. Unless the order states otherwise, a dismissal under this paragraph . . . is without prejudice." Rule 41 applies to Section 2254 proceedings. Clark v. Tansey, 13 F.3d 1407, 1413 (10th Cir. 1993); Kramer v. Butler, 845 F.2d 1291, 1294 (5th Cir. 1988); Lowry v. Crews, No. 3:12CV525/LC/CJK, 2013 WL 1092465, at *1 (N.D. Fla. Feb. 12, 2013), *report and recommendation adopted*, No. 3:12CV525/LAC/CJK, 2013 WL 1092242 (N.D. Fla. Mar. 15, 2013).

Upon due consideration, the Court **GRANTS** Barron's Motion to Dismiss his Section 2254 Petition voluntarily. Consequently, the Court **DISMISSES** Barron's Section 2254 Petition without prejudice and **DIRECTS** the Clerk of Court to enter the appropriate judgment of dismissal and to **CLOSE** this case.

SO ORDERED, this 22 day of August, 2016.

LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA